

IN THE SUPREME COURT OF THE STATE OF DELAWARE

KENNETH M. FLOWERS,	§
	§ No. 211, 2011
Plaintiff Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware, in and
	§ for New Castle County
LAWRENCE A. RAMUNNO,	§ C.A. No. 10C-02-019
ESQUIRE,	§
	§
Defendant Below-	§
Appellee.	§

Submitted: June 29, 2011

Decided: August 16, 2011

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 16<sup>th</sup> day of August 2011, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The plaintiff-appellant, Kenneth M. Flowers, filed an appeal from the Superior Court's March 29, 2011 order granting the motion for summary judgment of the defendant-appellee, Lawrence A. Ramunno, Esquire.<sup>1</sup> Ramunno has moved to affirm the Superior Court's judgment on

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<sup>1</sup> The Superior Court's original December 9, 2010 order was vacated because it was sent to the wrong address. The order was re-issued on March 29, 2011.

the ground that it is manifest on the face of the opening brief that the appeal is without merit.<sup>2</sup> We agree and affirm.

(2) The record reflects that, on February 7, 2007, Flowers fell while in the United States Post Office in Wilmington, Delaware. It appears that Flowers walked into a pole used to facilitate pedestrian traffic flow, sustaining personal injuries when he fell. Flowers retained Ramunno to represent him on a personal injury claim. According to Ramunno, Flowers was told that, if the claim could not be settled out of court, his firm reserved the option to decline to file a lawsuit, since the liability aspect of the case was weak. After obtaining Flowers' available medical records, Ramunno sent them, and a \$150,000 demand, to the Post Office. Ramunno spoke to the adjustor for the Post Office in November 2007. The Post Office denied liability on the ground that the pole was in plain sight, but was willing to settle the case for a nuisance value of \$5,000.

(3) In December 2007, the attorney-client relationship between Flowers and Ramunno ended when Flowers refused to accept the \$5,000 offer and Ramunno refused to file suit against the Post Office. In a letter dated December 5, 2007, Ramunno informed Flowers that, due to irreconcilable differences regarding the value and merit of the case, he was

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<sup>2</sup> Supr. Ct. R. 25(a).

no longer able to represent Flowers. He informed Flowers of the applicable statute of limitations and advised Flowers to obtain the services of another attorney if he wished to file a lawsuit. Flowers engaged the services of another attorney, but that attorney withdrew prior to the running of the statute of limitations. Flowers ultimately accepted the \$5,000 settlement offer.

(4) Flowers then brought a legal malpractice action against Ramunno. His complaint alleged that Ramunno failed to interview the pertinent witnesses, prepared an improper settlement demand and failed to obtain all pertinent medical records. Ramunno filed a motion to dismiss or, in the alternative, for summary judgment. Because materials outside the pleadings were presented, the Superior Court deemed the motion to be a motion for summary judgment.<sup>3</sup> Following a hearing on the motion on August 19, 2010, the Superior Court granted the motion for summary judgment.

(5) In this appeal, Flowers claims that a) the Superior Court erred when it granted Ramunno's motion for summary judgment; b) if the case had been tried, he would have recovered more than \$5,000; and c) because

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<sup>3</sup> Super. Ct. Civ. R. 56.

of improper actions by Ramunno, he was forced to accept the \$5,000 settlement.

(6) In an appeal to this Court from the Superior Court's grant of summary judgment, this Court utilizes a *de novo* standard of review.<sup>4</sup> On a motion for summary judgment, the moving party must demonstrate that there are no genuine issues of material fact and that, viewing the facts in the light most favorable to the non-moving party, he is entitled to judgment as a matter of law.<sup>5</sup> On a claim of legal malpractice, the plaintiff must establish the following elements: a) the employment of the attorney; b) the attorney's neglect of a professional obligation; and c) resulting loss.<sup>6</sup> In connection with the final element, the plaintiff must demonstrate that the underlying action would have been successful but for the attorney's negligence.<sup>7</sup> Moreover, it is well-settled that expert testimony is necessary to support a claim of legal malpractice, except in those cases where the attorney's mistakes are so obvious that such testimony is not required.<sup>8</sup>

(7) We have undertaken a careful, *de novo* review of the record below. We find that there was no error or abuse of discretion on the part of

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<sup>4</sup> *ConAgra Foods, Inc. v. Lexington Ins. Co.*, 21 A.3d 62, 68 (Del. 2011).

<sup>5</sup> Super. Ct. Civ. R. 56(c).

<sup>6</sup> *Weaver v. Lukoff*, Del. Supr., No. 15, 1986, McNeilly, J. (July 1, 1986) (citing *Seiler v. Levitz Furniture Co.*, 367 A.2d 999, 1008 (1976)).

<sup>7</sup> *Id.*

<sup>8</sup> *Brett v. Berkowitz*, 706 A.2d 509, 517-18 (Del. 1998).

the Superior Court when it granted Ramunno's motion for summary judgment. The Superior Court correctly found that, viewing the facts in the light most favorable to Flowers, there was no factual or legal basis upon which a trier of fact could conclude that there was professional negligence or that Flowers' claim would have been successful but for Ramunno's conduct. As such, we conclude that the judgment of the Superior Court should be affirmed on the basis of the decision of the Superior Court below.

(8) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice